

SERVED: December 7, 1992

NTSB Order No. EA-3741

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 19th day of November, 1992

_____)	
THOMAS C. RICHARDS,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-10563
v.)	
)	
THOMAS J. HANSON,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

Respondent, appearing pro se, has appealed from the oral initial decision of Administrative Law Judge William E. Fowler, Jr., issued on August 7, 1990, following an evidentiary hearing.¹

The law judge affirmed an order of the Administrator suspending respondent's private pilot certificate for 30 days for violations

¹The initial decision, an excerpt from the hearing transcript, is attached.

of 14 C.F.R. 91.85(b) and 91.9.² We deny the appeal.

The law judge found that respondent had entered the Jackson, MI airport traffic area ("ATA," a 5 mile area surrounding the airport, Tr. at 14) without authorization. This finding was based on a transcript of the tower tape, and the testimony of two FAA witnesses. Mr. Paul, the controller at Jackson who spoke to respondent at the time, noted that there are similar violations at this airport once or twice a month. The tower transcript indicates that Mr. Paul, after seeing an unidentified aircraft in the ATA (allegedly the only aircraft in the vicinity), called it on the radio and advised that it needed permission to enter.³ After it identified itself, the aircraft responded: "Oh I'm sorry, will do sir." and "Alright sir sorry will do." Exhibit A-3, unnumbered p. 3. The aircraft number given was the aircraft respondent has admitted flying that day. Mr. Daspit, the FAA investigator, later spoke to respondent, who acknowledged the conversation with Mr. Paul.

²§ 91.85(b) read:

Unless otherwise authorized or required by ATC [air traffic control], no person may operate within an airport traffic area except for the purpose of landing at, or taking off from, an airport within that area. ATC authorization may be given as individual approval of specific operations or may be contained in written agreements between airport users and the tower concerned.

§ 91.9 provided:

No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

³Exhibit A-1 was used to illustrate respondent's position.

Respondent countered that he was not in the ATA and, in view of his flight plan, there would have been no reason for him to have been so close to the Jackson airport. Respondent argued that there was another aircraft in the area. He explained his apology to the controller as a desire simply not to argue.

The law judge rejected this testimony, in favor of the contradictory evidence. He concluded both that the identified aircraft was respondent's, and that the aircraft was within the ATA. He found the incident to have been an oversight on respondent's part, and he affirmed the 30-day suspension.

On appeal, respondent suggests that Mr. Paul's testimony is unreliable because he was not able to describe the offending aircraft as a motor-glider. This argument cannot prevail for two reasons. First, we cannot find that the controller's inability to name the aircraft type calls into question his other testimony, especially when his statement that it was a small aircraft is not incorrect in the broader sense.

Second, the law judge's decision was based, in substantial part, on his analysis of the credibility of the witnesses. That analysis may not be overturned unless shown to be arbitrary or capricious. Respondent's suggestion that Mr. Paul must have identified some other aircraft because of his lack of detail as to respondent's motor-glider is not a sufficient basis to overturn the law judge's finding, especially when concurrent radio contact between the tower and respondent's aircraft was recorded. Respondent's other claim -- that the law judge did not

consider the testimony and evidence as presented -- also fails to warrant reversal. Regardless of the law judge's characterization of the record, there is more than sufficient credible evidence to uphold the Administrator's order.⁴

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The 30-day suspension of respondent's private pilot certificate shall begin 30 days from the date of service of this order.⁵

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

⁴Respondent attaches to his appeal a number of documents that were not presented to the law judge and are not a part of the record. As such, and despite the Administrator's failure to object, they may not be considered at this appellate stage.

⁵For the purposes of this order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR § 61.19(f).